

STATE OF TENNESSEE
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December 10, 2003

Opinion No. 03-161

Rule-making authority of the Tennessee Title VI Compliance Commission

QUESTIONS

1. Does TENN. CODE ANN. § 4-21-905, and by reference TENN. CODE ANN. § 4-21-301 *et seq.*, or any other state law authorize the Tennessee Title VI Compliance Commission to make rules for the administration and handling of allegations of noncompliance with Title VI?

2. Does TENN. CODE ANN. § 4-21-905, and by reference TENN. CODE ANN. § 4-21-301 *et seq.*, or any other state law require the Title VI Compliance Commission to make rules for the administration and handling of allegations of noncompliance with Title VI?

3. If the Title VI Compliance Commission is authorized, but not required, to make such rules, is it permissible for the Title VI Compliance Commission to forego rule-making, but otherwise abide by the procedures set forth in TENN. CODE ANN. § 4-21-301 *et seq.*?

4. Given TENN. CODE ANN. § 4-21-905, as amended, is it permissible for the Title VI Compliance Commission to operate under the applicable Rules of the Tennessee Human Rights Commission for the administration and handling of allegations of noncompliance with Title VI?

5. If, in fulfilling its charge under the Executive Order, the Title VI Compliance Commission desires to establish a systematic method of handling allegations of noncompliance with Title VI, must the Title VI Compliance Commission initiate a rule-making?

OPINIONS

1. No.
2. No.
3. Not applicable. *See* answers to Questions 1 and 2.
4. Yes.
5. No. *See* answers to Questions 1 and 4.

ANALYSIS

Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000d, *et seq.* prohibits discrimination based on race in programs or activities receiving federal funds. The federal government is responsible for monitoring and investigating state and private entities to compel compliance with Title VI under possible forfeiture of federal grants and similar sanctions.¹ Aggrieved persons may file lawsuits based on alleged violations of Title VI directly in federal court.²

TENN. CODE ANN. § 4-21-904, Tennessee's counterpart to Title VI, prohibits state agencies and their grantees from discriminating on account of race, color or national origin in federally funded activities.³ The Tennessee Human Rights Commission ("THRC") has the authority to investigate violations of the Tennessee Human Rights Act ("THRA"), TENN. CODE ANN. § 4-21-904, and to review complaints filed with state agencies under TENN. CODE ANN. § 4-21-905 to determine whether the State agency program or activity that is the subject of the complaint is subject to Title VI.⁴ The THRC does not investigate, and does not have any authority to investigate allegations of noncompliance with Title VI.⁵

By Executive Order No. 34, on August 9, 2002, Governor Sundquist established the Tennessee Title VI Compliance Commission, which is attached to the Department of Personnel and is charged with, among other duties, reviewing current Title VI monitoring and enforcement procedures and serving "as the central coordinating agency for executive branch departments and agencies for technical assistance, consultation, and resources to encourage and assist compliance with the requirements of Title VI." The Executive Order also grants the Title VI Compliance Commission the authority to "[i]nvestigate allegations of noncompliance with Title VI" and to report its findings and recommendations to the Governor and the General Assembly. This Executive Order does not, however, purport to grant the Title VI Compliance Commission any authority to promulgate rules and regulations.

1. The Title VI Compliance Commission is not authorized to make rules for the

¹OP. TENN. ATTY. GEN. 00-107 (June 12, 2000) (copy attached).

²*Neighborhood Action Coalition v. Canton, Ohio*, 882 F.2d 1012, 1015 (6th Cir. 1989). For a thorough discussion of the overall federal scheme, *see* OP. TENN. ATTY. GEN. 92-47 (May 28, 1992).

³"It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964, or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving such funds, on the basis of race, color, or national origin." TENN. CODE ANN. § 4-21-904. The THRC is only authorized to initiate investigations of complaints within the scope of the THRA. For a complete discussion of the scope of the Tennessee Human Rights Act, *see* OP. TENN. ATTY. GEN. 99-192 (Sep. 28, 1999).

⁴OP. TENN. ATTY. GEN. 00-107 (June 12, 2000).

⁵OP. TENN. ATTY. GEN. 00-107 (June 12, 2000).

administration and handling of allegations of noncompliance with Title VI. Unlike the THRC, which was granted rule-making authority in TENN. CODE ANN. § 4-21-202(14),⁶ the Title VI Compliance Commission has not been granted any rule-making authority.

TENN. CODE ANN. § 4-21-904 states:

It is a discriminatory practice for any state agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964, or for any person receiving such federal funds from a state agency, to exclude a person from participation in, deny benefits to a person, or to subject a person to discrimination under any program or activity receiving such funds, on the basis of race, color, or national origin.

At the time the Executive Order was issued, TENN. CODE ANN. § 4-21-905 provided as follows:

Any person claiming to be aggrieved by a discriminatory practice under this part may file a complaint with the state agency receiving the funds within one hundred eight days (180) of the occurrence of the alleged discriminatory act. An aggrieved person may also file a complaint with the human rights commission, as provided in § 4-21-302. Complaints filed with the human rights commission are subject to all the powers of the commission and will be subject to all of the procedures set out in part 3 of this chapter. Complaints filed with state agencies are subject to review by the human rights commission for applicability under Title VI of the Civil Rights Act of 1964. [Acts 1995, ch. 381, § 1.]

Effective July 1, 2003, TENN. CODE ANN. § 4-21-905 was amended to read,

(a) Any person claiming to be aggrieved by a discriminatory practice under this part may file a complaint with the state department, agency or entity receiving the funds within one hundred eighty (180) days of the occurrence of the alleged discriminatory act. Any such complaint filed with a state department, agency or entity is subject to review by the Title VI compliance commission for applicability under Title VI of the Civil Rights Act of 1964, as amended.

⁶TENN. CODE ANN. § 4-21-202(14) gives the THRC the authority to “[a]dopt, promulgate, amend and rescind rules and regulations to effectuate the purposes and provisions of this chapter, including regulations requiring the posting of notices prepared or approved by the commission.”

(b) Any person claiming to be aggrieved by a discriminatory practice under this part may also file a complaint with the Title VI compliance commission, in the same manner established in § 4-21-302, for other discriminatory practices. If such a complaint is filed with the Title VI compliance commission pursuant to this section, then the commission shall exercise the same powers and shall observe the same procedures as are set forth in Part 3 of this chapter for the human rights commission when complaints of other discriminatory practices are filed with the commission pursuant to § 4-21-302.

The Executive Order granted the Title VI Compliance Commission the authority to investigate allegations of noncompliance with Title VI. As amended, TENN. CODE ANN. § 4-21-905 gives the Title VI Compliance Commission the same authority--previously held only by the THRC--to handle complaints alleging violations of the THRA and to review those complaints for the applicability of Title VI. However, neither the Executive Order nor the amended statute granted the Title VI Compliance Commission rule-making authority. Thus, the Title VI Compliance Commission's power does not include rule-making authority.

In reviewing allegations of Title VI violations, the Title VI Compliance Commission must follow the same rules promulgated for the THRC's review of discrimination complaints. TENN. CODE ANN. § 4-21-905 expressly states complaints are to be handled in the same manner as established in TENN. CODE ANN. § 4-21-302 and that the Title VI Compliance Commission "shall observe the same procedures."⁷ It appears to be the intent of the Legislature that the Title VI Compliance Commission follow the Rules promulgated by the THRC in Chapter 1500-1, Rules for Acting Upon Complaints of Discrimination (copy attached) when handling allegations of noncompliance with Title VI.

2. Because the Title VI Compliance Commission is not authorized to promulgate rules, it is not required to promulgate rules.

3. This question does not apply because the Title VI Compliance Commission is neither authorized nor required to make rules.

4. TENN. CODE ANN. § 4-21-905(b) required the Title VI Compliance Commission to follow the Rules of the THRC, Chapter 1500-1, when investigating alleged violations of Title VI. However, because the Title VI Compliance Commission does not have the power to enforce Title VI,⁸ some of the rules promulgated for investigations of THRA violations would not apply to the Title VI Compliance Commission's investigations of Title VI violations.

⁷TENN. CODE ANN. § 4-21-905.

⁸The Title VI Compliance Commission may only investigate and report its findings regarding alleged Title VI violations to the Governor.

5. The Title VI Compliance Commission does not have to initiate a rule-making since it is not authorized to make rules. When fulfilling its charge under the Executive Order to investigate allegations of Title VI violations, the Title VI Compliance Commission must follow the procedures outlined in the THRC's Rules for Acting Upon Complaints of Discrimination, Chapter 1500-1.

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